

Department of Energy

§ 429.110

- (2) Impose additional certification testing requirements;
- (3) Seek injunctive relief;
- (4) Assess a civil penalty for knowing violations; or
- (5) Undertake any combination of the above.

§ 429.104 Assessment testing.

DOE may, at any time, test a basic model to assess whether the basic model is in compliance with the applicable energy conservation standard(s).

§ 429.106 Investigation of compliance.

- (a) DOE may initiate an investigation that a basic model may not be compliant with an applicable conservation standard, certification requirement or other regulation at any time.
- (b) DOE may, at any time, request any information relevant to determining compliance with any requirement under parts 429, 430 and 431, including the data underlying certification of a basic model. Such data may be used by DOE to make a determination of compliance or noncompliance with an applicable standard.

§ 429.110 Enforcement testing.

(a) *General provisions.* (1) If DOE has reason to believe that a basic model is not in compliance it may test for enforcement.

(2) DOE will select and test units pursuant to paragraphs (c) and (e) of this section.

(3) Testing will be conducted at a lab accredited to the International Organization for Standardization (ISO)/International Electrotechnical Commission (IEC), "General requirements for the competence of testing and calibration laboratories," ISO/IEC 17025:2005(E) (incorporated by reference; see § 429.4). If testing cannot be completed at an independent lab, DOE, at its discretion, may allow enforcement testing at a manufacturer's lab, so long as the lab is accredited to ISO/IEC 17025:2005(E) and DOE representatives witness the testing.

(b) *Test notice.* (1) To obtain units for enforcement testing to determine compliance with an applicable standard, DOE will issue a test notice addressed to the manufacturer in accordance with the following requirements:

(i) DOE will send the test notice to the manufacturer's certifying official or other company official.

(ii) The test notice will specify the basic model that will be selected for testing, the method of selecting the test sample, the maximum size of the sample and the size of the initial test sample, the dates at which testing is scheduled to be started and completed, and the facility at which testing will be conducted. The test notice may also provide for situations in which the selected basic model is unavailable for testing and may include alternative models or basic models.

(iii) DOE will state in the test notice that it will select the units of a basic model to be tested from the manufacturer, from one or more distributors, and/or from one or more retailers. If any unit is selected from a distributor or retailer, the manufacturer shall make arrangements with the distributor or retailer for compensation for or replacement of any such units.

(iv) DOE may require in the test notice that the manufacturer of a basic model ship or cause to be shipped from a retailer or distributor at its expense the requested number of units of a basic model specified in such test notice to the testing laboratory specified in the test notice. The manufacturer shall ship the specified initial test unit(s) of the basic model to the testing laboratory within 5 working days from the time units are selected.

(v) If DOE determines that the units identified are low-volume or built-to-order products, DOE will contact the manufacturer to develop a plan for enforcement testing in lieu of paragraphs (ii)–(iv) of this section.

(2) [Reserved]

(c) *Test unit selection.* (1) To select units for testing from a:

(i) Manufacturer's warehouse, distributor, or other facility affiliated with the manufacturer. DOE will select a batch sample at random in accordance with the provisions in paragraph (e) of this section and the conditions specified in the test notice. DOE will randomly select an initial test sample of units from the batch sample for testing in accordance with appendices A through C of this subpart. DOE will

make a determination whether an alternative sample size will be used in accordance with the provisions in paragraph (e)(1)(iv) of this section.

(ii) Retailer or other facility not affiliated with the manufacturer. DOE will select an initial test sample of units at random that satisfies the minimum units necessary for testing in accordance with the provisions in appendices A through C of this subpart and the conditions specified in the test notice. Depending on the results of the testing, DOE may select additional units for testing from a retailer in accordance with appendices A through C of this subpart. If the full sample is not available from a retailer, DOE will make a determination whether an alternative sample size will be used in accordance with the provisions in paragraph (e)(1)(iv) of this section.

(2) Units tested in accordance with the applicable test procedure under this part by DOE or another Federal agency, pursuant to other provisions or programs, may count toward units in the test sample.

(3) The resulting test data shall constitute official test data for the basic model. Such test data will be used by DOE to make a determination of compliance or noncompliance if a sufficient number of tests have been conducted to satisfy the requirements of paragraph (e) of this section and appendices A through C of this subpart.

(d) *Test unit preparation.* (1) Prior to and during testing, a test unit selected for enforcement testing shall not be prepared, modified, or adjusted in any manner unless such preparation, modification, or adjustment is allowed by the applicable DOE test procedure. One test shall be conducted for each test unit in accordance with the applicable test procedures prescribed in parts 430 and 431.

(2) No quality control, testing or assembly procedures shall be performed on a test unit, or any parts and sub-assemblies thereof, that is not performed during the production and assembly of all other units included in the basic model.

(3) A test unit shall be considered defective if such unit is inoperative or is found to be in noncompliance due to failure of the unit to operate according

to the manufacturer's design and operating instructions. Defective units, including those damaged due to shipping or handling, shall be reported immediately to DOE. DOE may authorize testing of an additional unit on a case-by-case basis.

(e) *Basic model compliance.* (1) DOE will evaluate whether a basic model complies with the applicable energy conservation standard(s) based on testing conducted in accordance with the applicable test procedures specified in parts 430 and 431, and with the following statistical sampling procedures:

(i) For products with applicable energy conservation standard(s) in § 430.32, and commercial pre-rinse spray valves, illuminated exit signs, traffic signal modules and pedestrian modules, commercial clothes washers, and metal halide lamp ballasts, DOE will use a sample size of not more than 21 units and follow the sampling plans in appendix A of this subpart (Sampling for Enforcement Testing of Covered Consumer Products and Certain High-Volume Commercial Equipment).

(ii) For automatic commercial ice makers; commercial refrigerators, freezers, and refrigerator-freezers; refrigerated bottled or canned vending machines; and commercial HVAC and WH equipment, DOE will use an initial sample size of not more than four units and follow the sampling plans in appendix B of this subpart (Sampling Plan for Enforcement Testing of Covered Equipment and Certain Low-Volume Covered Products). If fewer than four units of a basic model are available for testing when the manufacturer receives the notice, then:

(A) DOE will test the available unit(s); or

(B) If one or more other units of the basic model are expected to become available within 30 calendar days, DOE may instead, at its discretion, test either:

(1) The available unit(s) and one or more of the other units that subsequently become available (up to a maximum of four); or

(2) Up to four of the other units that subsequently become available.

(iii) For distribution transformers, DOE will use an initial sample size of not more than five units and follow the

sampling plans in appendix C of this subpart (Sampling Plan for Enforcement Testing of Distribution Transformers). If fewer than five units of a basic model are available for testing when the manufacturer receives the test notice, then:

(A) DOE will test the available unit(s); or

(B) If one or more other units of the basic model are expected to become available within 30 calendar days, the Department may instead, at its discretion, test either:

(1) The available unit(s) and one or more of the other units that subsequently become available (up to a maximum of five); or

(2) Up to five of the other units that subsequently become available.

(iv) Notwithstanding paragraphs (e)(1)(i) through (e)(1)(iii) of this section, if testing of the available or subsequently available units of a basic model would be impractical, as for example when a basic model has unusual testing requirements or has limited production, DOE may in its discretion decide to base the determination of compliance on the testing of fewer than the otherwise required number of units.

(v) When DOE makes a determination in accordance with section (e)(1)(iv) to test less than the number of units specified in parts (d)(1)(i) through (d)(1)(iii) of this section, DOE will base the compliance determination on the results of such testing in accordance with appendix B of this subpart (Sampling Plan for Enforcement Testing of Covered Equipment and Certain Low-Volume Covered Products) using a sample size (n_1) equal to the number of units tested.

(vi) For the purposes of paragraphs (e)(1)(i) through (e)(1)(v) of this section, available units are those that are available for distribution in commerce within the United States.

§ 429.114 Notice of noncompliance and notice to cease distribution of a basic model.

(a) In the event that DOE determines a basic model is noncompliant with an applicable energy conservation standard, or if a manufacturer or private labeler determines a basic model to be in

noncompliance, DOE may issue a notice of noncompliance determination to the manufacturer or private labeler. This notice of noncompliance determination will notify the manufacturer or private labeler of its obligation to:

(1) Immediately cease distribution in commerce of the basic model;

(2) Give immediate written notification of the determination of noncompliance to all persons to whom the manufacturer has distributed units of the basic model manufactured since the date of the last determination of compliance; and

(3) Provide DOE, within 30 calendar days of the request, records, reports and other documentation pertaining to the acquisition, ordering, storage, shipment, or sale of a basic model determined to be in noncompliance.

(b) In the event that DOE determines a manufacturer has failed to comply with an applicable certification requirement with respect to a particular basic model, DOE may issue a notice of noncompliance determination to the manufacturer or private labeler. This notice of noncompliance determination will notify the manufacturer or private labeler of its obligation to:

(1) Immediately cease distribution in commerce of the basic model;

(2) Immediately comply with the applicable certification requirement; and/or

(3) Provide DOE within 30 days of the request, records, reports and other documentation pertaining to the acquisition, ordering, storage, shipment, or sale of the basic model.

(c) If a manufacturer or private labeler fails to comply with the required actions in the notice of noncompliance determination as set forth in paragraphs (a) or (b) of this section, the General Counsel (or delegee) may seek, among other remedies, injunctive action and civil penalties, where appropriate.

(d) The manufacturer may modify a basic model determined to be noncompliant with an applicable energy conservation standard in such manner as to make it comply with the applicable standard. Such modified basic model shall then be treated as a new basic model and must be certified in accordance with the provisions of this